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APPLICATION NO. FILING DATE		FILING DATE	FIRST NAMED INVENTOR ATTORNEY DOCKI		O. CONFIRMATION NO.	
10/045,671	10/045,671 10/22/2001		James L. Jason JR.	10559/502001/P11794	2397	
20985	7590	07/24/2006		EXAMINER		
FISH & R		SON, PC	HSU, ALPUS			
P.O. BOX MINNEAP		N 55440-1022		ART UNIT	PAPER NUMBER	
	·			2616		
				DATE MAILED: 07/24/2006		

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	ation No. Applicant(s)							
	065 - 4 - 1' 0	10/045,671	JA	JASON, JAMES L.						
	Office Action Summary	Examiner	Ar	rt Unit						
		Alpus H. Hsu	·	316						
Period fo	The MAILING DATE of this communication a or Reply	ppears on the cover	sheet with the corre	espondence addres	ss					
WHIC - Exte after - If NC - Failu Any	ORTENED STATUTORY PERIOD FOR REF CHEVER IS LONGER, FROM THE MAILING resions of time may be available under the provisions of 37 CFR SIX (6) MONTHS from the mailing date of this communication. O period for reply is specified above, the maximum statutory perior re to reply within the set or extended period for reply will, by state reply received by the Office later than three months after the mained and patent term adjustment. See 37 CFR 1.704(b).	DATE OF THIS CO 1.136(a). In no event, however ad will apply and will expire Soute, cause the application to	MMUNICATION. ver, may a reply be timely f IX (6) MONTHS from the r become ABANDONED (3)	filed mailing date of this commu						
Status										
1)⊠	Responsive to communication(s) filed on <u>02</u>	May 2006.								
'=	This action is FINAL . 2b)⊠ This action is non-final.									
3)										
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.									
Dispositi	on of Claims									
4)⊠	☑ Claim(s) <u>1-21,23-30,32,33 and 35-40</u> is/are pending in the application.									
	4a) Of the above claim(s) is/are withdrawn from consideration.									
5)□	Claim(s) is/are allowed.									
6)⊠	Claim(s) <u>1-21, 23-30, 32, 33, 35-40</u> is/are rejected.									
7)	Claim(s) is/are objected to.									
8)[Claim(s) are subject to restriction and	or election requiren	nent.							
Applicati	on Papers									
9)[The specification is objected to by the Exami	ner.								
10)	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.									
	Applicant may not request that any objection to the	e drawing(s) be held i	n abeyance. See 37	CFR 1.85(a).						
_	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).									
11)	The oath or declaration is objected to by the	Examiner. Note the	attached Office Act	tion or form PTO-1	152.					
Priority ι	ınder 35 U.S.C. § 119									
12)	12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).									
a)	a) ☐ All b) ☐ Some * c) ☐ None of:									
	1. Certified copies of the priority documents have been received.									
	2. Certified copies of the priority documents have been received in Application No									
	3. Copies of the certified copies of the priority documents have been received in this National Stage									
	application from the International Bureau (PCT Rule 17.2(a)).									
* S	ee the attached detailed Office action for a li	st of the certified cop	oies not received.							
Attachmen	• •									
	e of References Cited (PTO-892)		nterview Summary (PTC							
_	e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449 or PTO/SB/0		aper No(s)/Mail Date lotice of Informal Paten		2)					
	r No(s)/Mail Date		Other:							

Application/Control Number: 10/045,671 Page 2

Art Unit: 2616

1. Applicant's arguments with respect to claims 1-21, 22-30, 32, 33, 35-40 have been considered but are most in view of the new ground(s) of rejection.

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 38-40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 38-39 are directed to a computer program embodied in a carrier wave, and claim 40 is directed to a medium bearing intelligence, none of which is directed to any statutory subject matter (see "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility", pages 52-54.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 4. Claims 1-21, 23-30, 32, 33, 35-40 are rejected under 35 U.S.C. 102(e) as being anticipated by BAHADIROGLU in Pub. No. US 200/0186660 A1 (of record), hereinafter referred as BAHADIROGLU.

Regarding claims 1-21, 23-30, 32, 33 and 35, BAHADIROGLU discloses a method of determining a maximum packet size for data packets sent along a network path by: sending a data packet along a path from a first network point to a second network point; along the path, generating fragment packets from the data packet; analyzing the size of at least one of the

Art Unit: 2616

fragment packets relative to a maximum packet size; and depending on a result of the analysis, re-setting the maximum packet size based on the size of the at least one of the fragment packets (see abstract, paragraphs [0027], [0048], [0051] to [0054], [0107] to [0108], [0120] to [0121], [0125], [0143] to [0150]).

Regarding claims 36-40, BAHADIROGLU also discloses a computer program embodied in a computer readable medium or a carrier wave, the program capable of configuring a computer to and a medium bearing intelligence configured to enable a machine to effect actions that: send a data packet along a path from a first network point to a second network point; along the path, generate fragment packets from the data; analyze the size of at least one of the fragment packets; and depending on a result of the analysis, re-set a maximum packet size based on the size of the one of the fragment packets.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571)272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number: 10/045,671 Page 4

Art Unit: 2616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHH

Alpus H. Hsu Primary Examiner Art Unit 2616

Mpms. you